

## 48A C.J.S. Judges § 281

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### IX. Disqualification to Act

#### C. Grounds for Disqualification

##### 2. Interest and Relationship

###### a. Interest

###### (3) Particular Interests

## § 281. Judge as party

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  42

**In the absence of express provision to the contrary, a judge may not be disqualified by being a merely nominal party to a suit.**

In the absence of express provision to the contrary, a judge may not be disqualified by being a merely nominal party to a suit<sup>1</sup> or by mere pendency of another lawsuit brought against the judge by one of the parties to a suit before the judge.<sup>2</sup> Also, where the case against a judge is disposed of, the judge is not disqualified from holding a hearing and adjudicating issues concerning the former adversary.<sup>3</sup> If a judge is a party interested in the result of the litigation, the judge is, generally, disqualified,<sup>4</sup> and, sometimes, by force of statute, a judge may not act in any action or proceeding

to which the judge is a party.<sup>5</sup> However, where all the judges are disqualified because they are all defendants in an action, none are disqualified.<sup>6</sup>

A judge's disqualification is not affected by a failure to serve the judge with process,<sup>7</sup> or by the judge's refusal to permit pleadings to be filed making the judge a party in good faith,<sup>8</sup> or by striking out such pleadings after they have been filed.<sup>9</sup> It is not necessary, in order that a judge may be disqualified, that the judge must be an actual party to the action or proceeding if the judge is in any way interested in the subject matter.<sup>10</sup> Although the judge is not a party to the action, the judge may be disqualified if he or she would be bound by,<sup>11</sup> or have the right to come in and take the benefit of,<sup>12</sup> the decree or judgment which may be pronounced therein.

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## Footnotes

1 Ind.—[State ex rel. Hatt v. Stuteville](#), 242 Ind. 84, 175 N.E.2d 21 (1961).

Ky.—[Ex parte Farley](#), 570 S.W.2d 617 (Ky. 1978).

2 Mass.—[Com. v. Leventhal](#), 364 Mass. 718, 307 N.E.2d 839 (1974).

Tex.—[Citizens Law Institute v. State](#), 559 S.W.2d 381 (Tex. Civ. App. Dallas 1977).

3 Mo.—[State v. Bosler](#), 366 S.W.2d 369 (Mo. 1963).

4 U.S.—[Turner v. American Bar Ass'n](#), 407 F. Supp. 451 (N.D. Tex. 1975), aff'd, 539 F.2d 715 (7th Cir. 1976) and judgment aff'd, 542 F.2d 56 (8th Cir. 1976).

W. Va.—[State ex rel. Preissler v. Dostert](#), 163 W. Va. 719, 260 S.E.2d 279 (1979).

As to relationship to party, see § 292.

5 N.Y.—[Moers v. Gilbert](#), 175 Misc. 733, 25 N.Y.S.2d 114 (Sup 1941), judgment aff'd, 261 A.D. 957, 27 N.Y.S.2d 425 (1st Dep't 1941) and order aff'd, 261 A.D. 957, 27 N.Y.S.2d 426 (1st Dep't 1941).

W. Va.—[Dankmer v. City Ice & Fuel Co.](#), 121 W. Va. 752, 6 S.E.2d 771 (1939).

6 U.S.—[U.S. v. Whitesel](#), 543 F.2d 1176 (6th Cir. 1976).

7 Tex.—[Kennedy v. Wortham](#), 314 S.W.3d 34 (Tex. App. Texarkana 2010).

8 Cal.—[Hall v. Superior Court in and for Imperial County](#), 198 Cal. 373, 245 P. 814 (1926).

9 Cal.—[Hall v. Superior Court in and for Imperial County](#), 198 Cal. 373, 245 P. 814 (1926).

10 Cal.—[Hall v. Superior Court in and for Imperial County](#), 198 Cal. 373, 245 P. 814 (1926).

W. Va.—[Dankmer v. City Ice & Fuel Co.](#), 121 W. Va. 752, 6 S.E.2d 771 (1939).

11 W. Va.—[City of Grafton v. Holt](#), 58 W. Va. 182, 52 S.E. 21 (1905).

12 Cal.—[Lindsay-Strathmore Irr. Dist. v. Superior Court of Tulare County](#), 182 Cal. 315, 187 P. 1056 (1920).

W. Va.—[City of Grafton v. Holt](#), 58 W. Va. 182, 52 S.E. 21 (1905).

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